IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 663 of 1986

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
RAJUJI BADARJI - Opponent(s)

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Appearance :
MR KC SHAH, LD.APP for Appellant(s) : 1,
MR GHANSHYAM AMIN for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

and

HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 04/10/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE C.K.BUCH)

1. The present appeal is filed by the State of Gujarat under Section 378 of the Code of Criminal Procedure, 1973, against the judgment and order of acquittal dated 31st December, 1985, passed by the learned Additional Sessions Judge, Ahmedabad Rural at Narol, in Sessions Case No.114 of 1985, whereby the learned trial Judge has acquitted the respondent-orig.accused from the charge of offence punishable under Section 302 of the Indian Penal Code.

2. Mr.K.C. Shah, learned Additional Public Prosecutor, appearing on behalf of the appellant-State has taken us through the charge (Ex.4) and the facts placed before the learned trial Judge in detail vis-a-vis the grounds of challenge mentioned in paragraph no.4 of the memo of the appeal. He has also taken us through the oral as well as the documentary evidence led during the course of trial and also the reasons assigned by the learned trial Judge for recording the finding

of acquittal.

3. To appreciate the say of Mr.K.C. Shah, learned Additional Public Prosecutor, placed before us as well as Mr.Saurabh Amin and Mr.Y.V. Vaghela, learned counsel appearing on behalf of Mr.Ghanshyam Amin, firstly according to us, it would be proper to state the facts of the case of the prosecution in brief as under :

3.1 It is alleged that Kokila (victim-deceased) was the wife of the respondent-accused and her marriage was solemnised prior to 8 years of the incident in question. On that very day, Nanduben-other sister of Kokila (deceased) had also married with the real brother of the respondent-accused. As Kokila was minor, she was brought to her matrimonial house before about two years prior to the incident in question. She was residing with the respondent-accused and her sister Nanduben, who married with the brother of the respondent-accused, was also residing in the house adjacent to the house of Kokila. The relations between the respondent-accused and

his wife Kokila were not cordial and the respondent-accused used to treat his wife cruelly and therefore, she was making regular complaints to her mother Amrutaben about the quarrelsome nature of the respondent-accused and the cruelty inflicted to her sister Nanduben also by the respondent-accused.

3.2 It is further alleged that four days prior to the date of incident, when Nanduben and Kokila were going to their parental home, the respondent-accused had gone to the bus-stand and against the will of Kokila, the respondent-accused took Kokila back to his house. On the date of incident i.e. on 01st August, 1985, Kokila had attempted to go to her parental home once again but when she was at the bus-stand, she was forcibly dragged and brought back to her matrimonial house by the respondent-accused any time between 08-30 a.m. and 09-00 a.m. Kokila was found dead on the very day and it is alleged that Kokila was done to death by way of strangulation at the house of the respondent-accused by him any time between 09-00 a.m. and 11-00 a.m.

3.3 It is the say of the prosecution that the respondent-accused at about 11-00 to 11-30 a.m. called some persons from the neighbourhood. The door of the house was bolted from inside with iron chain, popularly known as “Sankal”. The door was thereafter opened. Kokila was found lying dead. Before the opening of the door, the respondent-accused as well as some persons from the neighbouring area had seen the deceased lying in the house. The accused thereafter gave a complaint informing the police that his wife Kokila has committed suicide. Thereafter, the investigation started and the Investigating Agency found on the strength of the opinion expressed by the doctor, who had performed postmortem, that Kokila has been done to death and this is a case of suicide. The Investigating Agency also found that the accused is the person responsible for the criminal wrong done by him for the offence punishable under Section 302 of the Indian Penal Code and therefore, chargesheeted him accordingly on the strength of the evidence

collected during the course of investigation.

4. We have gone through the judgment and order of acquittal under challenge and the entire set of evidence from the paper-book as well as the original record and proceedings before us.

5. We are aware that the present appeal is against the judgment and order of acquittal and while appreciating the evidence and arguments advanced before us, we are supposed to see as to whether the view taken by the learned Additional Sessions Judge is plausible and whether in fact from the evidence produced by the prosecution and the version of the defence-side, the view taken by the learned Additional Sessions Judge is plausible or not. It is well settled in catena of decisions of this Court as well as the Apex Court that while dealing with the appeal against the judgment and order of acquittal the following certain cardinal principles are required to be kept in mind :

(i) There is a presumption of

innocence in favour of the respondent-accused which has been strengthened by the acquittal of the respondent-accused by the learned trial Judge.

(ii) If two views are possible, a view favourable to the accused should be taken.

(iii) That the learned trial Judge had advantage of looking at demeanour of witnesses.

(iv) The respondent-accused is entitled to a reasonable benefit of doubt; doubt which a prudent man will reasonably, honestly and consciously entertain. Before discussing and referring to the relevant part of the oral as well as documentary evidence led during the course of trial, it would be beneficial to mention certain features which according to us, go to the root

and touch the strength and correctness of the finding arrived at by the learned trial Judge.

(v) Nanduben-real sister of Kokila is the wife of real brother of respondent-accused and both these sisters were residing with their respective husbands in the houses which were adjacent at village Indroda, Dist.Gandhinagar (now an independent Revenue as well as Judicial District). The criminal wrong has been held to have been committed even according to the learned trial Judge and the finding is that this is a probable case of suicide. It is neither the finding of the learned trial Judge nor was the case of the prosecution that the death of Kokila was a natural or an accidental death. The death of

Kokila was an unnatural death and the learned trial Judge was to see whether the prosecution has successfully proved the death of Kokila as homicidal death or not. Any question as to the harmony in the marriage life can be answered best by either spouse or close relatives, if they are aware. Same is the case of dispute between these spouses. The respondent-accused was arrested on the eve of 02nd September, 1985 and was examined by the doctor on 03rd September, 1985 and the injuries were found on the body of the person accused. The respondent himself has admitted his presence at his house at about 09-00 a.m. and also at about 11-00 to 11-30 a.m.

(vi) The respondent has also admitted that he did sustain

injuries on his body but the same were caused by Kokila when he was taking her back forcibly to his house from the bus-stand. A piece of electric wire was used for strangulation.

(vii) The accused was the first person to inform the residents in the neighbouring area and/or police about the death of Kokila and he has accepted while responding to the question put to him during his examination under Section 313 of the Code of Criminal Procedure, 1973, that he was the informant and he informed the police that his wife has committed suicide.

(viii) The duty of the prosecution was to prove that on 01st August, 1985, between 09-00 a.m. and 11-00 a.m. the accused strangulated his wife Kokila by black electric wire in his

House No.69 of Gohil Vaas, Indroda, Dist.Gandhinagar and committed her murder and to prove this charge, the prosecution has examined number of witnesses and the learned trial Judge has appreciated the evidence of all these witnesses. The case of the prosecution is based on circumstantial evidence and while appreciating various circumstances emerging from record, the learned trial Judge has observed that certain incriminating circumstances can be said to have been established by the learned trial Judge. It has also been held by the learned trial Judge that the death of Kokila is due to strangulation and that too with the use of black electric wire brought before the Court as muddamal. It has also been

held by the learned trial Judge on the strength of the evidence that the prosecution has satisfactorily proved that the door of the house of the respondent was bolted from inside with the help of the iron chain (Sankal) and thereafter, it was opened and it was possible to bolt the door from inside by a person who is outside the house and in the same way, that bolted iron chain can be opened from inside as well as outside as it is possible to insert the hand from the gap available in the door of the house. Accepting the version of the Investigating Officer Mr.Patel, the learned trial Judge has accepted that it was possible for the respondent, if he wants, to create an impression that Kokila had committed

suicide, then he could bolt the house with the use of inner iron chain keeping himself outside the house and it was possible to bolt or unbolt the house with the iron chain by a person who is outside the house. When we do not find any error in the finding arrived at by the learned trial Judge, and we are also of the same view that this fact has been satisfactorily established by the prosecution by producing relevant convincing and cogent evidence through the Police Inspector Mr.Patel. Mr.Patel has also stated that he has drawn the panchnama in presence of panchas to that effect. Of course, the panch witness examined to prove this panchnama has not supported the case of the prosecution. But according to us, this finding

arrived at by the learned trial Judge while evaluating that part of evidence (paragraph no.19 of the judgment and order under challenge) is logical and legal, then the rest of the evidence obviously was required to be appreciated in that background and the totality emerging from record. It is rightly argued by Mr.Shah that while evaluating the evidence a Judge may adopt any reasonable course to arrive at an objective finding in accordance with his judicial conscious. It may be full of elimination or the theory of use of cumulative effect of the evidence led by the prosecution or another logical convincing method. Here the learned trial Judge, according to Mr.Shah, has recored the finding mainly on surmises contrary to the

evidence available on record and conjectures which are in direct conflict with the speaking circumstances, which are there against the respondent.

(ix) The learned trial Judge after evaluating the medical evidence led by the doctor, who has performed autopsy, has recorded that the death was because of strangulation. However, it is held that this can be because of suicide. So Kokila herself might have sustained injuries noticed by the doctor and for recording this finding, he has held that the version of the doctor is not cogent and sufficient to conclude that the present case of strangulation is absolutely homicidal. This finding appears to have been based on certain answers given by Dr.Purshottam P. Patel, PW-

1, Ex.19, in his cross-examination that *"I cannot say whether there was any struggle or no struggle had taken place in the present case before the death of Kokila. After performing postmortem examination, I could not say as to whether strangulation was homicidal or suicidal."* But as per the settled legal position, the evidence of a witness is required to be evaluated as a whole. A line or two, of course, can be projected, especially when he is an expert, by a Judge while developing reasons but such part of evidence should be read in reference to the evidence of the expert witnesses. In the present case, the doctor has mentioned in Column no.17 of the postmortem note (Ex.20) that the following injuries

have been noticed by him :

1. Abrasion of the size of 2″x1/8″ linear in from of neck above thyroid bone (cartilage).
2. Linear abrasion of the size of 1/4″x 1/8″ on lest side of neck, 1½″ away from injury no.1 (laterally).
3. Minor abrasion of the size of 1/2″ x 1/2″ at about 1½″ lateral to injury no.2.
4. Linear abrasion of the size of 1½″ x 1/8″ on right side of left in line of injury no.1 transversely and laterally at the distance of 1½″.
5. Abrasion of the size of 1/4″ x 1/8″ at ½″ below injury No.4.
6. Two parallel bruise marks of the size of ½″ x ¼″ on right side of neck at 1″ lateral to injury No.4.
7. Two parallel bruise marks ½″ x

¼″ at lest side of neck at 1″ lateral to posterior mid-line.

6. It is stated by Dr.Patel that he was able to notice the fracture of hyoid bone (cartilage) on palpation and on inspection after opening the neck while performing postmortem and he has given the details of the internal injuries in Column nos.18 and 20 of the postmortem note. The said doctor found that the death is due to asphyxia due to strangulation observing that “circumstantial evidence should be taken into consideration to decide whether it is homicidal or suicidal”. So the above referred answer given by the doctor in the cross-examination is nothing but reiteration of the opinion expressed by him in Column no.29 of the postmortem note, where the doctor performing postmortem note expresses opinion as to the cause of death.

7. The learned trial Judge was, therefore, supposed to evaluate the oral evidence led by three witnesses who have led some evidence as to the motive of the crime and other evidence

including medical evidence led by the prosecution by examining PW-8 Dr.Mangalbhai Vitthalbhai Patel. This Dr.Patel has, as mentioned earlier, examined the respondent-accused on 08th August, 1985 i.e. on the third day of the incident at about 11-25 a.m. In the same way, one another important evidence, according to us, also requires consideration i.e. Inquest Panchnama of the dead body of Kokila produced vide Ex.9. The Inquest Panchnama is the document admitted in evidence on the consent of the advocate appearing for the defence side. So the contents of the Inquest Panchnama obviously can be read without formal proof. When it has been held proved by the learned trial Judge that the entry door of the room where the dead body of Kokila was found lying is capable of being bolted from inside by a person who is outside that room or area, then the other evidence available on record was required to be appreciated from all possible angles; otherwise on the sole count that the room was found bolted from inside, the learned trial Judge could have given clean acquittal or

benefit of doubt to the respondent.

8. According to us, this is a case where re-appreciation of evidence evaluated by the trial Court is necessary. We are in agreement with the submissions made on behalf of the respondent-accused that this Court while dealing with the acquittal appeal under Section 378 of the Code of Criminal Procedure, 1973 cannot substitute reasons by rewriting the judgment with a view to reverse the finding of acquittal on the basis of some evidence merely because two views are possible and the Appellate Court would not be justified in reversing the judgment and order of acquittal if the same is based on the evidence on record and the view taken is a possible reasonable view on the basis of the evidence. In the catena of decisions, this Court as well as the Apex Court in reference to the scheme of Section 378 of the Code of Criminal Procedure, 1973 has observed that in appeal against the judgment and order of acquittal, the High Court is entitled to re-appreciate the evidence if it is found that the view

taken by the acquitting Court was not a possible view or it was a perverse or infirm or palpably erroneous view ***(Hari Chand vs. State of Delhi, AIR 1996 SC 1477).*** The Apex Court in one another decision in the case of ***State of Punjab v. Ajayab Singh, reported in 1995 (2) SCC 486*** has also made pertinent observations as under :

> “We agree that this Court is not precluded that the Court hearing appeal against the order of acquittal is not prevented from examining and re-appreciating the evidence on record but the duty of a Court hearing appeal against the acquittal in the first instance is to satisfy itself if the view taken by the acquitting Court was possible view or not and if the Court comes to conclusion that it was not, it can on re-appreciation of evidence reverse the order.”

9. In the present case, the oral evidence of

Chimanbhai Somaji-father of Kokila (deceased), PW-4, Ex.24, does not help the prosecution. He has been declared hostile considering the nature of questions asked with a view to prove ultimately the contradiction by the learned Additional Public Prosecutor; and the suggestion made by the learned counsel appearing for the respondent does not carry the case of either side and this evidence is not found useful from any angle to anybody including the respondent-accused. It is true that the evidence of a hostile witness is not required to be rejected in toto and if it is found helpful even to the respondent to any extent along with other evidence and the totality emerging from record, it can be used. But this witness has not stated anything which can be said to be incriminating against the respondent or prosecution. One fact stated by him in his deposition remotely helps the prosecution, wherein he has said that his daughter Kokila was visiting her parental home but he was not told by Kokila about the dispute between her husband and herself. But according to this witness, she was telling

about the same to her mother Amrutben. In the same way, Nanduben-sister of Kokila has also not talked with him about the behaviour and conduct of her in-laws. He has expressed his ignorance about the marriage life of his daughters. PW-5 Nanduben, who has been examined vide Ex.25, has substantially supported the case of the prosecution. She has proved that after five years of marriage, Kokila was sent to her matrimonial home and Kokila stayed with the respondent for about one year. The respondent was staying with Kokila separately in a house and Nanduben was staying with her husband with her two children in the adjacent house. Kokila had no issue and on the date of incident, Nanduben was at her parental home. She has stated that on the third day of her arrival at her parental home, she heard the news of death of her sister Kokila. Lastly both the sisters were coming to their parental home from village Indroda and they had boarded the bus, but before the bus could depart, the respondent came there and dragged Kokila and he had told Kokila, “You just come home and you will see your death”.

But this witness has not paid any serious heed to the behaviour of the respondent, who is also the brother-in-law (sister's husband) of this witness Nanduben. She has also stated that the respondent was taking up quarrel with Kokila and she was being beaten up practically everyday and, therefore, Kokila used to go to Nanduben and Nanduben was sending her back at her home. The respondent was serving during day hours and he was going for his work at about 08-00 a.m. but as both the sisters i.e. Kokila (deceased) and witness Nanduben, were to go to their parental home, the respondent had returned from his work place when both of them had left their respective houses to go to their parental home. At that time, mother of the respondent-accused was there in the house. She was not knowing the cause as to why the husband of Kokila was beating her. Nanduben has stated that she herself has not informed her parents that Kokila is being beaten up by her husband. She has expressed her ignorance whether Kokila has ever informed about the ill-treatment and beating to her mother. On the date of incident in question, one Popatji

and Baldevji had been there to her father's house and all of them were taken to village Indroda. Initially, Baldevji has informed that Kokila was ill and she was being administered Saline bottles. This Baldevji is a distant relative of the respondent. When they came to Indroda, the dead body of Kokila was in the hospital. The respondent was not there. The dead body of Kokila was thereafter taken back to her matrimonial home. She had no occasion to talk with the respondent i.e. her brother-in-law (sister's husband). She has stated that as Kokila has been killed by the respondent, she is afraid of her life and therefore, she has not returned to her husband's home. In the cross-examination, this witness has fairly accepted that she has no dispute with her husband and her husband is not beating her. At the time of marriage, Kokila was very young. The eldest brother of her husband is Amarsinhbhai. Kokila had actually marriage life of one year when she came to reside with her husband. She has confirmed about the working hours of the respondent as 08-00 a.m. She has accepted the suggestion and stated

that Kokila had told her that she is tired of her husband and therefore, she also wanted to go to her parental home and she did not want to reside with the respondent and, therefore, she had started for parental home with Nanduben. As the respondent came to know about this, he had returned from his job, came to the bus-stand and dragged Kokila to his house. Kokila had intended to board the bus but her husband dragged her towards his house. By that time, the bus had departed. The respondent had taken Kokila against her wish and will. She has also stated that during day hours, Kokila used to come to her house and in the evening she was sending Kokila back to her house, which is adjacent to her house.

10. The other witness i.e. Amrutben, mother of deceased Kokila, examined vide Ex.35, PW-9, substantially corroborates the version of Nanduben about ill-treatment given by the respondent to Kokila. In one year period prior to incident, Kokila had been to her parental home on 6 to 7 occasions and all the times she was complaining that her husband is ill-

treating and beating her. But this witness Amrutben was keen to see that her matrimonial tie remains intact. In the last visit, Nandu had stayed with her for about 4 (four) days and at that time they got the news about the death of Kokila. During that visit, PW-Nandu had informed her that Kokila was also to come with her but her husband dragged her back. According to Amrutben, her son-in-law and Ajitbhai-husband of Nandu along with other 4 to 5 persons had come to their village and they were informed that Kokila had fallen ill and she had been admitted in the hospital. They were taken to hospital but they were not shown the body of Kokila. On the next day morning, at about 10-00 a.m. the dead body of Kokila was shown. But the body was taken by the in-laws and she was cremated at Indroda. As they were shocked and disturbed as Kokila was killed, they had returned to their village without participating in the cremation ceremony. This witness has also been cross-examined and it has come in evidence of this witness that they had reached to Gandhinagar Civil Hospital at about 12-00 midnight. It has

also come on record that her husband had informed the community panch about ill-treatment given to Kokila. She was also told by Nandu that her husband had dragged Kokila from bus-stand. She has stated that she had not gone to Indroda even after knowing that Kokila was forcibly dragged by her husband when she was trying to board the bus. According to this witness, as they were sawing paddy crop and the work was going on, she had not gone. Ajitji and others had come to their village in a jeep car. She was also informed by Kokila and Nandu both that Kokila is being beaten by the respondent. Before two months from the date of death of Kokila, she was told by Kokila that her husband is beating her. According to this witness, her husband had tried to pursue the respondent and also attempted to know the reason why he is beating Kokila but this witness has denied the suggestion made by the defence counsel that the deceased Kokila was not to continue her matrimonial ties with the respondent and, therefore, she was returning to her parental home frequently and she had never complained

about the behaviour and conduct of the respondent. She has also denied the suggestion that Kokila had never complained to her husband or to her. She has accepted that she had never told anyting about ill-treatment given to Kokila to any other person in the village or to any community panch.

11. The evidence of these two material witnesses was required to be appreciated and the learned trial Judge while recording the finding of acquittal has said that it is possible that the deceased, as she was not happy with the respondent, might have committed suicide. She was not in a mood to continue her matrimonial ties and, therefore, against the wish and will of her husband i.e. respondent herein, she was going to her parental home frequently and had attempted to board the bus with her sister before three to four days of the incident. According to us, this finding is palpably wrong. A lady, whose real sister and wife of her husband's brother if is residing in the adjacent house and who was given solace practically everyday, would not commit suicide

especially when she had an opportunity to return to her parental home. She would not have returned on persuasion of her mother and sister on more than one occasion. Certain facts have come on record during the course of cross-examination. Nanduben and Amrutben, sister and mother of deceased Kokila respectively, have led the evidence which has substantially established the motive of the crime. It is settled legal position that the motive of the crime is not required to be proved in the case of direct evidence. In the case of circumstantial evidence also, if the circumstances are so grave, direct and convincing, then also the motive is not required to be proved. The motive on number of occasions is found by the various Courts of this country hidden in the mind of the accused. The conduct of the respondent with Kokila prior to her death has come on record. There is nothing on record to show that the brother of the respondent had ever attempted to intervene in the matter. If anything was wrong with Kokila, it was not impossible for the elder sister Nanduben or Ajitbhai

-Nanduben's husband to intervene in the matter and Nanduben herself would not have put her matrimonial ties into uncertainty which were otherwise cordial till the death of her sister. When she had two children, she would not have supported a baseless stand of her sister Kokila, if her real brother-in-law is innocent. The frequent visits of Kokila to the house of Nanduben may not be liked by the respondent but there is nothing in the evidence of Nanduben even suggested by the defence counsel that the respondent had requested Nanduben-sister-in-law (Bhabhi) of respondent, that she should not permit Kokila to visit her house. When it was possible to solicit the interference of Nanduben for some positive improvement by the respondent, if something was wrong with Kokila only, neither such things have been found by the Investigating Agency nor it has come on record during the course of cross-examination of either Nanduben or Amrutben. The finding recorded on the strength of the evidence of these two witnesses is nothing but a conjecture based on stretch of imagination and

not on the strength of concrete evidence available. The evidence of these two witnesses has been used as the backbone of finding arrived at by the trial Court, but the totality says that the version of these two witnesses could have been used as an important piece of evidence to draw an inference of commission of murder because many other direct and indirect evidence are available on record.

12. The possibility of commission of suicide by Kokila by tying electric wire around her neck whether probablises, was the crucial question and according to us, this question has not been **addressed** by the learned trial Judge in light of the other evidence over and above the version as to the existence of the motive proved by two important prosecution witnesses. Reasonable inference can be drawn by the Court but it should be otherwise possible on the strength of the evidence available on record. The respondent was not liked by the deceased is one of the inferences drawn by the trial Court mainly on the basis of one fact that the deceased had gone to her parental home for

about 5 to 7 times in a short span of actual marriage life of about one year. But for this conduct/ behaviour of the deceased, the prosecution has satisfactorily proved that because of constant physical and mental cruelty, she was compelled to come down to her parental home and practically she was visiting her sister's house which is adjacent to her house and her sister was pursuing her to reside and continue her wedlock with the respondent. The presence of real sister in the adjacent house and a sister having dual relationship i.e. as a real sister and as a wife of respondent's elder brother, according to us, was a matter of solace to her. Therefore only, the parents and especially PW-Amrutben was able to pursue her to continue her wedlock with a hope of peaceful future. The short period of actual marriage life of about one year, whether would lead a husband to believe that his wife would not return from her parental home, if she is permitted to go to her parental home with her real sister, especially when the sister of his wife is also his real brother's wife (Bhabhi), is the

question. It is nobody's say that there was no cause for both the sisters to go to their parental home. In large number of cases, young girls are going to their parental homes during pick seasons so that they can help their parents in the actual harvesting season or while sawing the field, if the distance between the parental home and matrimonial home is not so far. It has come on record that the family of the deceased and PW-Nandu was busy in sawing paddy crop. **So a person who had dragged his wife forcibly from the bus she had boarded, would not utter a word or a phrase indicating threat to her life**. On the contrary, according to us, the say of Nanduben is found with ring of truth, wherein she has stated that though she has heard those words, she did not pay any serious heed. After all, the person who had uttered the said threatening words was her husband's real brother. If the wife has really committed suicide, in absence of any grave or strange circumstances, the husband would try to be there at his home so as to get solace and

sympathy from the close relatives and friends. On the contrary, it is in evidence that the respondent was not seen either by Nandu or Amrutben or any other witness of the said village examined during the course of trial even in the capacity of a panch, that the respondent was very well there. He was also not seen in the hospital where the panchnama was performed. There is no documentary evidence to show that the dead body was handed over to the husband physically by the hospital or police authority. The conduct of the respondent of leaving his village Indroda and even not to meet his father-in-law and mother-in-law or even sister-in-law, who is his elder brother's wife (Bhabhi), is found strange behaviour and this conduct is a circumstance against the respondent which was required to be addressed by the Court in its true perspective.

13. It is not a matter of dispute that the respondent was not available to police till noon hours on 02nd August, 1985 and after his arrest he was sent for examination. This part

of evidence has practically remained unchallenged. Of course, he was taken to hospital by police and sent for examination under a police Yadi. Dr.Mangalbhai Patel, as discussed earlier, had examined and found some injuries on his body. These injuries found on the body of the respondent have been described by the said doctor in his deposition at Ex.31. We would like to narrate the details of the injuries found on the body of the respondent:

1. Linear brownish abrasion over left side chest 4″ long.
2. Linear brownish abrasion on right side chest 3″ long.
3. Linear brownish abrasion on the left elbow joint 1″ long.

14. It is opined by this doctor that these injuries could be caused by any hard and blunt substance. It is also the say of the doctor that healing period would be of 5 to 7 days, “if complication does not arise”. An injury which would take 5 to 7 days for healing and a

person is having four such injuries normally would suffer from feeling of burning and/or pain. When he was taken to hospital, these injuries were not found treated earlier by any person or doctor. There is no reference as to the application of any domestic medicine on the aforesaid four wounds; otherwise the doctor would have mentioned. There is no cross-examination on this point of this witness Dr.Mangalbhai. So it can be said that the injuries must be reasonably deep. All these injuries were found brownish and hence, it was possible to infer that all these injuries must have been committed simultaneously or at the same time. If these injuries were sustained on different occasions or at some interval then the colour of the injuries would be different than noticed by the doctor. A wrong debate was made before the Court as to the admissibility of the history given by the accused to the doctor, whereby he has admitted some crucial aspects. Without entering into this legal controversy, which was placed before the Court, we would like to concentrate on one aspect which also could

have been considered by the trial Court at the time of appreciating the totality of the evidence available on record i.e. the explanation given by the accused during examination under Section 313 of the Code of Criminal Procedure, 1973. The PW-Nandu has stated that the job hours of the respondent were from 08-00 a.m. However, the respondent has said that he was serving during night hours and he was returning in the morning and when he was returning on the date of incident, he saw that his wife is going to bus-stand and so he had followed her towards the Pathikashram area. She was proceeding towards CH-3 bus-stand and he was to bring her back by pursuing her but he could not and at that time some quarrel had taken place. We have carefully read the entire answer to the question no.13, whereby he was afforded an opportunity to explain about the injuries found on his body and he has stated that in that quarrel, Kokila had inflicted injuries on his chest with her nails. Thus, it is clear from the answer given by the respondent that the injuries which were noticed by the doctor

when the accused was examined, were nail marks given by the deceased. Now the crucial question before the Court was that whether this explanation should be accepted as reasonable or probable explanation or not. The respondent has tried to pose that these injuries found on his body have been sustained prior to the act of commission of alleged suicide by Kokila. The similar answer is given by him while answering question no.14 but he has admitted that these injuries have been inflicted by his wife and that also with her nails between 08-00 a.m and 08-45 a.m. on the date of incident. When the learned trial Judge has accepted that it was possible for a person to bolt the door from inside even by staying outside, then the condition of the body noticed by the Investigating Officer and panchas described in the Inquest Panchnama was required to be evaluated with its significance. It is neither said by the panch examined nor it has been asked to the officer who has drawn Inquest Panchnama that there were any type of marks on the palm or fingers of the deceased, which normally could have

been found if the deceased herself had stretched the electric wire around her neck with great force. The doctor has not suggested that such impressions or marks would disappear in couple of hours or minutes even if the person dies. The learned trial Judge has made use of some comments made by the experts found in the book of Modi's Medical Jurisprudence. No such use should have been made by the learned trial Judge unless the opinion expressed by the expert in such or similar book is put to a doctor or an expert by pointing out the expert's view arrived at after studies. Such an extract of opinion book would not help the either party as a piece of evidence. In the present case as mentioned earlier, the doctor had opined that the death is due to strangulation and for deciding whether it is a homicidal or suicidal, circumstantial evidence should be taken into consideration. The circumstances are grave against the accused in the present case. The doctor who has performed postmortem was not aware that the dead body was found in a particular position. **The body of the person**

deceased was lying on her chest and it was parallel to earth and that too palm.

15. There is a positive note in the panchnama Ex.9 that no noticeable marks or patches were found in the palm or on any of the fingers of the deceased. This inquest panchnama Ex.9 also reveals that there were no marks of violence other than injuries that were found on the neck. The absence of another injury than the injury noticed by the doctor at the time of performing autopsy rules out the possibility of scuffle between the husband and wife i.e. respondent herein and his wife Kokila. It would be difficult for this Court to believe that a husband if is inflicted injuries on the chest by nail marks shall receive such injuries without making any counter to escape from further damage or injury. When it is the implied say of the accused that his wife was hostile to him and, therefore, she was in a mood to go to her parental home, at least he would resist the commission of injury on his body. While drawing inquest panchnama on 01st

August, 1985, on the date of incident at about 15-50 hours, neither the electric wire nor any string was found tied tight around the neck of the deceased. As per the panchnama Ex.23 tendered in evidence by PW-3 Hemtuji Pratapji and also proved by the Investigating Officer, the pieces of electric wire were lying at some distance from the dead body. So obviously at the time of drawing the inquest panchnama at Ex.9, the muddamal wire was not recovered and it has been recovered while drawing the panchnama of the scene of occurrence, perhaps after removal of the dead body from the place because it was drawn between 17-15 and 18-30 hours. The learned trial Judge has mainly concentrated on the decision cited by the learned defence's counsel reported in 1981 Cr.L.J. 78, where the Andhra Pradesh High Court on the strength of the facts of the case cited had drawn inference that the facts are not sufficient to establish beyond doubt that deceased was the victim of murder. According to the Andhra Pradesh High Court, in the facts and circumstances of the case, the prosecution has not successfully proved that the death by

asphyxia due to drowning does not look result of murderous attempt. The accused of the cited case was facing charge of murder and the prosecution was mainly relying on two major circumstances that (i) the deceased was hale and hearty and mentally sound and after few days her dead body was found at the scene of occurrence and the doctor performing panchnama said that the death is due to asphyxia due to drowning and the accused being husband and only person in the company of the deceased. The dead body was not found from the area under the domain and exclusive control of the accused. The learned Judge according to us has committed grave error in accepting the ratio of the said decision because the facts are materially different in the present case. No third person was in the residential premises of the respondent at the relevant point of time. Even as per the say of the respondent, he and his wife both were there because he had brought his wife from the bus-stand when she was proceeding to go to her parental home. The say of the respondent is that thereafter he had proceeded to his field where his mother

was working. There is no evidence as to the distance between the residential premises and field of the respondent. The mother of the respondent has not come before the Court to strengthen the defence of the respondent saying that she was in the field and the respondent had been there between 09-00 a.m. and 11-30 a.m. Undisputedly, the respondent was the first person to notice and, therefore, he had informed the persons in the neighbourhood. So the bare words of the respondent whether should be accepted as gospel truth, was the question before the learned trial Judge and he has accepted his bare words as truth and such an explanation which is consistent to his conduct and other evidence has been used as shadow of doubt for recording reasons for acquittal. This is palpably wrong and contrary to the established principles of criminal jurisprudence. Much prior to the case of ***State of Punjab v. Karnail Singh, reported in AIR 2003 SC 3609***, the Apex Court has said that the rule of benefit of doubt must not be stretched beyond

reasonable probability which can be said to be a far-fetched doubt. We would like to quote the relevant paragraph no.12 of the decision in the case of Karnail Singh (supra), where the Apex Court has referred to various decisions, which is the essence of the accepted principles of law in this regard as under :

> “12. Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let hundred guilty escape than punish an innocent. Letting guilty escape is not doing justice according to law. (See : Gurbachan Singh v. Satpal Singh and others, (AIR 1990 SC 209)). Prosecution is not required to meet any and every hypothesis put forward by the accused. (See State of U.P. v. Ashok Kumar Srivastava, (AIR 1992 SC 840)). A reasonable doubt is not an imaginary,

trivial or merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. If a case is proved perfectly, it is argued that it is artificial; if a case has some flaws inevitable because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty persons must be allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish. (See Inder Singh and another v. State Delhi Admn.), (AIR 1978 SC 1091). Vague hunches cannot take place of judicial evaluation. "A judge does not preside over a criminal trial, merely to see that no innocent man is punished. A judge also presides to see that a guilty man @page-SC3614 does not escape. Both are public duties." (Per Viscount Simon in Stirland v. Director of Public Prosecution (1944 AC (PC)

315)) quoted in State of U.P. v. Anil Singh, (AIR 1988 SC 1998). Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. (See : Shivaji Sahabrao Bobade and another v. State of Maharashtra, (1974 (1) SCR 489)) , State of U.P. v. Krishna Gopal and another, (AIR 1988 SC 2154) and Gangadhar Behera and others v. State of Orissa, (2002 (7) Supreme 276).”

16. The plain reading of the judgment under challenge gives an impression that as the learned trial Judge was not that clear or decisive while drawing the conclusion, he has recorded the finding of acquittal. It reads clear that according to him the respondent might have or might not have committed the offence because the death by strangulation may be homicidal or may not be homicidal and may be a suicide. But according to us, no sea-saw situation is emerging from evidence capable of taking the Court under a shadow of doubt.

17. We are in agreement that this Court should not consider the alleged admission made by the respondent before the doctor who has examined him, wherein he has said that “he has sustained injuries during incident and scuffle with his wife”. In the same way, the demonstration of bolting the door of the room or house from inside and outside shown by the respondent also cannot be considered by this Court and that part of panchnama is inadmissible, but when the Investigating Officer has stated in his deposition on oath and there is reference to that effect that he himself had done that exercise and he was satisfied that it is possible to bolt the door by remaining outside the room with the inside chain (Sankal), the learned trial Judge ought not to have given much weightage to the explanation given by the respondent when the respondent himself was found injured. The previous and subsequent conduct of the respondent to the incident ought not to have been ignored. There is no conflict in the medical evidence as to the age of injury

described by the doctor and when the respondent himself has said that on the date of incident, he sustained injuries, then it is not possible to jump to a conclusion that these injuries probably might have been caused on the day on which he forcibly dragged his wife from the bus-stand when Kokila (deceased) was leaving for her parental home with her real sister Nandu, otherwise the colour of the injuries would have been materially different on 03rd August, 1985, because that day being fifth or sixth day. As it is the say of Nandu-sister of Kokila (deceased) that on the third day when she was at her parental home, they received the message of death of Kokila. So on the date of incident, the deceased had made one another attempt to leave for her parental home. As per the say of the respondent when he came to know that his wife was proceeding towards CH-3 bus-stand, he had followed his wife by pursuing her. At that time, he had a scuffle with his wife. He sustained injuries during that scuffle and after dropping his wife at his residence, he had proceeded towards his agricultural field.

When he returned at about 11 to 12 hours, he saw that the door of his house was bolted from inside. When it was possible for the respondent to unbolt the door from outside, as per the evidence available on record, he claims that he had knocked the door. Thereafter also, instead of opening the door from outside, he tried to peep into the house from the gap of two shutters of the door and saw his wife lying on the earth and he also saw wires surrounded to her neck and both the ends of electric wire were in her hand. When he claims that after seeing this, he called neighbours and somebody unbolted the house and everybody thereafter went inside. Thereafter, Shantaben-sister-in-law (Bhabhi) of respondent i.e. wife of eldest brother of respondent, was called. When this explanation is found unconvincing and contrary to the situation noticed by the Investigating Agency and the panchnamas, the learned trial Judge ought not to have accepted that each word uttered by the respondent is true. On the contrary, he on the strength of the evidence was required to hold that these answers given to different

questions asked to him are false and contrary to the evidence. It does not probablise the theory of suicide and theory of suicide if is ruled out, then the only finding possible was that was of homicidal death.

18. Mr.Amin, learned counsel appearing for the respondent-accused, has placed reliance on the following decisions :

(1) State of U.P. v. Shri Krishan, reported in (2005) 10 SCC 399.

(2) T. Subramanian v. State of T.N., reported in (2006) 1 SCC 401.

(3) State of Punjab v. Ajaib Singh and others, reported in (2005) 9 SCC 94.

(4) State of U.P. v. Gambhir Singh and others,reported in (2005)11 SCC 271.

19. All these authorities are cited in support of the arguments advanced that if on the same evidence two views are reasonably possible,

the view in favour of the accused must be preferred and while dealing with the appeal against the judgment and order of acquittal, if two views are possible, acquittal should not be disturbed. This principle of law is an accepted and well established principle of law and there is no need for us to reproduce the observations made by the Apex Court in the above referred decisions based on the facts of the cited decision. Two of the above cited decisions are the cases where the Apex Court was dealing with the order of acquittal recorded in a case under the Prevention of Corruption Act.

20. In the same way, it is also settled that prosecution is under obligation to prove the case beyond all reasonable doubts. The suspicion, however grave may be, cannot take the place of proof. There is a long distance between may be and must be. In the same way, the observations made by the Apex Court in the case of ***M.S. Narayana Memon alis Mani v. State of Kerala and another, reported in (2006) 6 SCC 39***, also would not help the accused. It is

true that the duty is very heavy upon the prosecution as compared with the accused. The accused is supposed to put probabilities. Even onus in a given case if is on the accused, he is to probablise his defence reasonably. The Apex Court in this cited decision was dealing with the case related to Negotiable Instruments' Act-on account of dishonour of cheque and therefore, according to us, this ratio would not help the accused because, according to us, in the present case, no inference other than guilt was possible beyond doubt. Keeping the scheme of Sections 3, 101 and 103 of the Indian Evidence Act, 1872, in the case of ***Narendra Singh and another v. State of M.P., reported in (2004) 10 SCC 699***, the Apex Court acquitted the accused saying that *"We, thus, having regard to the post-mortem report, are of the opinion that the cause of death of Bimalbai although is shrouded in mystery but benefit thereof must go to the appellants as in the event of there being two possible views, the one support the accused should be upheld"*. According to us, in the case of Narendra Singh (supra), the entire

case was based on circumstantial evidence. Four accused persons namely husband, mother-in-law, father-in-law and sister-in-law of the deceased were tried for committing murder of deceased by throttling and thereafter causing disappearance of evidence by setting her on fire. The dead body of the deceased was found lying in the kitchen. The trial Court disbelieved the prosecution case. It is observed that the door of the kitchen had to be broken open. As the incident presumably took place in between 04-15 p.m. and 05-30 p.m., it was impossible for the assassin to escape out of the window in the kitchen. Assuming that it was a case of murder, the trial Court wondered, keeping in view the place of occurrence vis-a-vis the points of possible entries thereto, as to how the assassin made his exodus. The trial Court did not fully rely upon the post-mortem report having regard to certain cuttings and overwritings therein. It was further held that the plea of alibi of the accused persons could neither be ignored nor said to be unreliable. In appeal, the High Court had reversed the

acquittal and had convicted some of the accused i.e. husband, mother-in-law and sister-in-law for the offence punishable under Section 201 of the Indian Penal Code and the order of acquittal in respect of father-in-law was confirmed. So the facts of the case of Narendra Singh (supra) are so different than the facts of the present case. We are not inclined to explain as to how this would help the accused in any manner.

21. We are also not in agreement with the arguments advanced on behalf of the respondent-accused that this Court while dealing with the appeal against the order of acquittal cannot and should not reappreciate the evidence and replace its own finding. But it is well settled that although in an appeal from an order of acquittal the powers of the High Court to reassess the evidence and reach its own conclusion are as extensive as in appeal against the order of conviction, yet, as a rule of prudence, it should always give proper weight and consideration to certain aspects and reappreciate the evidence. So in

all cases, if the main grounds on which the Court below has based its order acquitting the accused are reasonable and plausible and cannot be entirely or effectively dislodged or demolished, the High Court should not disturb the acquittal. However, it is not a matter of doubt that the appellate Court has full powers to review an order of acquittal and to come to its own conclusion in appeal against the acquittal. If the Court is capable of observing that the finding recorded by the learned trial Judge of acquittal is patently illegal or perverse. We are supposed to express reasons that how the finding of acquittal is factually or legally erroneous or can be said to be palpably wrong. Manifestly wrong order of acquittal leading to miscarriage of justice cannot be upheld and learned Additional Public Prosecutor Mr.K.C. Shah has rightly placed reliance on the observations made by the Apex Court in the case of Karnail Singh (supra). In the case of ***Main Pal and another v. State of Haryana and others, reported in 2004 AIR SCW 2140***, the

Apex Court has observed that the High Court was justified in undertaking the reappreciation of evidence and holding the accused guilty. The paramount consideration of the Court is to ensure that the miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from conviction of an innocent. In a case where admissible trustworthy evidence is ignored, a duty is cast upon the Appellate Court to reappreciate the evidence.

22. Mr.K.C. Shah, learned Additional Public Prosecutor, has also relied upon the decision in the case of ***State of Madhya Pradesh v. Dharkole alias Govind Singh and others, reported in AIR 2005 SC 44***, the Apex Court while reversing the order of acquittal in paragraph nos.11 and 12 have observed as under:

> "11. Doubts would be called reasonable if they are free from a zest

for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an over emotional response. Doubts must be actual and substantial doubts as to the guilt of the accused persons arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and commonsense. It must grow out of the evidence in the case.

12. The concepts of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last

> analysis, rest on a robust common sense and, ultimately, on the trained intuitions of the judge. While the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uninformed legitimization of trivialities would make a mockery of administration of criminal justice. This position was illuminatingly stated by Venkatachaliah, J. (as His Lordships then was) in State of U.P. v. Krishna Gopal and Anr. (AIR 1988 SC 2154).”

The above observations are useful to us because according to us, the learned trial Judge has created a shadow of doubt while developing the reasons and that too contrary to the medical evidence available and the opinion expressed by the doctors. The doctor had never said that it was not possible for him to opine that the strangulation is homicidal. But in the last column of the postmortem note, a word of caution was placed. The Investigating Agency could have gone to

the doctor with the inquest panchnama, scene of offence panchnama, injury certificate issued by Dr.Mangalbhai Patel, which were found on the body of the person accused and obtain an opinion that now what is final opinion. But according to us, when it was possible for the trial Court to evaluate his opinion evidence and recorded finding on the strength of the other available evidence, the learned trial Judge ought not to have said that the death may be because of suicide.

23. Mr.K.C. Shah, learned Additional Public Prosecutor, has also relied upon the decision in the case of ***State of U.P. v. Satish, reported in 2005 Cr.L.J. 1428***, wherein the Apex Court has observed in paragraph no.25 that :

> "25. .. .. .. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case,

one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate Court to re-appreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. (See Bhagwan Singh and others v. State of Madhya Pradesh (2002 (2) Supreme 567). The principle to be followed by appellate Court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and

relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference. .. .. ..”

The above observation is the direct reply to the authorities cited on behalf of the respondent-accused referred to hereinabove.

24. We are also not impressed with the arguments advanced on behalf of the respondent-accused that after lapse of about 20 years, the Court should not disturb the finding of acquittal and such reversal shall have grave adverse impact. But in the case of ***State of M.P. v. Ghanshyam Singh, reported in (2003) 8 SCC 13,*** the Apex Court has observed that long pendency of a matter by itself could not justify lesser sentence. Taking note of the purpose for which the sentence is imposed, it cannot be laid down as a rule of universal application that a long passage of time in all cases would justify minimal sentence. Of course, the Apex

Court in the case of Ghanshyam Singh (supra) was dealing with the quantum of punishment; but the Apex Court in the case of ***State of Rajasthan v. Kishore, reported in AIR 1996 SC 3041,*** held the accused guilty after careful scrutiny of the evidence and dying declaration and quashed and set aside the judgment and order of acquittal of the High Court where the incident in question was of 1978. The acquittal was recorded in the year 1983 and the Apex Court reversed the acquittal in February, 1996 i.e. after a lapse of about 13 years.

25. We are not impressed by the observations placed before us which are made by the Rajasthan High Court in the case of ***State of Rajasthan v. Neel Kanth and others, reported in 2005 Cr.L.J. (Raj.) 905,*** where the Rajasthan High Court has confirmed the order of acquittal and one of the criteria probably was that the incident is more than three decades old. In this decision, the accused were facing charge of offence punishable under Sections 453, 323, 324 and 34 of the Indian

Penal Code and on facts the Rajasthan High Court was also of the view that on same set of facts two views are possible and, therefore, the view in favour of the accused if accepted by the trial Court should not be disturbed. The case of the prosecution has remained constant and it has been established consistently. There is neither any material contradiction found nor any improvement which can be termed as an important infirmity. So we are inclined to reverse the finding of acquittal by allowing the appeal preferred by the appellant-State.

26. Normally, a person earlier acquitted if is held guilty, should be called and should be heard on the point of quantum of punishment, but when we are imposing the punishment minimum prescribed for the offence punishable under Section 302 of the Indian Penal Code, it is not necessary to call the respondent-accused for formal hearing on the point of quantum of punishment. Therefore, we are inclined to impose minimum punishment prescribed under Section 302 of the Indian

Penal Code i.e. rigorous imprisonment for life and to pay a fine of Rs.500/- (Rupees Five Hundred only).

27. For short, in view of above observations and discussion, the present appeal preferred by the appellant-State is hereby allowed. The judgment and order of acquittal dated 31st December, 1985, passed by the learned Additional Sessions Judge, Ahmedabad Rural at Narol, in Sessions Case No.114 of 1985 is hereby quashed and set aside. The respondent-accused Rajuji Badarji is hereby held guilty for the offence punishable under Section 302 of the Indian Penal Code for causing murder of his wife Kokila at his residence at village Indroda, Dist.Gandhinagar and therefore, he is convicted and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.500/-, in default of making payment of fine, shall undergo simple imprisonment for 15 days.

28. As the respondent-accused had been declared acquitted by the trial Court, he is given time

of 30 days from today to surrender himself before the concerned trial Court, failing which the trial Court shall issue a non-bailable warrant of arrest against the respondent-accused, so that he can be sent to prison for undergoing imprisonment as ordered hereinabove. The bail bond shall stand cancelled on the day on which the respondent-accused surrenders or on the 30th day from the date of the present judgment, whichever is earlier.

(C.K. Buch, J)

(Sharad D. Dave, J)

Aakar